

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CHARLES BRAY, ) Case No. 06cv2759-WQH (BLM)  
)  
Plaintiff, ) **ORDER GRANTING JOINT MOTION TO**  
v. ) **CONTINUE DATES**  
)  
LOWE'S COMPANIES, INC., d/b/a )  
LOWE'S COMPANIES, LLC, d/b/a )  
LOWE'S HIW, INC., and DOES 1 to )  
30, )  
Defendants. )  
\_\_\_\_\_  
AND RELATED CROSS-CLAIMS )  
\_\_\_\_\_  
)

On January 2, 2008, parties to the above matter submitted a joint motion to continue expert disclosure dates. Doc. No. 30. The Court responded in part to this order on January 7, 2008. Doc. No. 32. After speaking with the parties at a January 10, 2008 Case Management Conference, the Court finds it appropriate to further grant the parties' motion as follows.

1. All expert disclosures required by Fed. R. Civ. P. 26(a)(2), that were previously required to be served by January 25, 2008, shall be served on all parties on or before February 22, 2008. Any contradictory

1 or rebuttal information, previously required to be disclosed by February  
2 8, 2008, shall be disclosed on or before March 7, 2008. In addition,  
3 Fed. R. Civ. P. 26(e)(1) imposes a duty on the parties to supplement the  
4 expert disclosures made pursuant to Fed. R. Civ. P. 26(a)(2)(B) by the  
5 time that pretrial disclosures are due under Fed. R. Civ. P. 26(a)(3)  
6 (discussed below).

7 The parties are advised to consult with Fed. R. Civ. P. 26(a)(2)  
8 regarding expert disclosures. Such disclosures shall include an expert  
9 report, all supporting materials, a complete statement of all opinions  
10 to be expressed and the basis and reasons therefor, the data or other  
11 information considered by the expert in forming the opinions, any  
12 exhibits to be used as a summary of or as support for the opinions, the  
13 qualifications of the witness including a list of all publications  
14 authored by the witness within the preceding ten years, the compensation  
15 to be paid for the study and testimony, and a list of other cases in  
16 which the witness has testified as an expert at trial or by deposition  
17 within the preceding four years.

18 This disclosure requirement applies to all persons retained or  
19 specially employed to provide expert testimony, or whose duties as an  
20 employee of the party regularly involve the giving of expert testimony.

21 **Please be advised that failure to comply with this section or any**  
22 **other discovery order of the Court may result in the sanctions provided**  
23 **for in Fed. R. Civ. P. 37, including a prohibition on the introduction**  
24 **of experts or other designated matters in evidence.**

25 2. All discovery, previously required to be completed by March  
26 7, 2008, shall be completed by all parties on or before April 18, 2008.  
27 "Completed" means that all discovery under Rules 30-36 of the Federal  
28 Rules of Civil Procedure, and discovery subpoenas under Rule 45, must be

1 initiated a sufficient period of time in advance of the cut-off date, so  
 2 that it may be completed by the cut-off date, taking into account the  
 3 times for service, notice, and response as set forth in the Federal  
 4 Rules of Civil Procedure.

5 Counsel shall promptly and in good faith meet and confer with  
 6 regard to all discovery disputes in compliance with Civil Local Rules  
 7 16.5(k) and 26.1(a). All discovery motions shall be filed within thirty  
 8 (30) days after counsel have met and conferred and reached an impasse  
 9 with regard to any particular discovery issue, but in no event shall  
 10 discovery motions be filed more than sixty (60) days after the date upon  
 11 which the event giving rise to the discovery dispute occurred. For oral  
 12 discovery, the event giving rise to the discovery dispute is the  
 13 completion of the transcript of the affected portion of the deposition.  
 14 For written discovery, the event giving rise to the discovery dispute is  
 15 either the service of the response, or, if no response was served, the  
 16 initial date the response was due. In addition, all discovery motions  
 17 must be filed within thirty (30) days after the close of discovery.

18 3. The Mandatory Settlement Conference, previously scheduled  
 19 for January 24, 2008, is continued to February 29, 2008 at 9:30 a.m. in  
 20 the chambers of Magistrate Judge Barbara L. Major located at 940 Front  
 21 Street, Suite 5140, San Diego, CA 92101. All discussions at the  
 22 Mandatory Settlement Conference will be informal, off the record,  
 23 privileged, and confidential. Counsel for any non-English speaking  
 24 party is responsible for arranging for the appearance of an interpreter  
 25 at the conference.

26 a. Personal Appearance of Parties Required: All parties,  
 27 adjusters for insured defendants, and other representatives of a party  
 28 having full and complete authority to enter into a binding settlement,

1 as well as the principal attorneys responsible for the litigation, must  
 2 be present in person and legally and factually prepared to discuss  
 3 settlement of the case. Counsel appearing without their clients  
 4 (whether or not counsel has been given settlement authority) will be  
 5 cause for immediate imposition of sanctions and may also result in the  
 6 immediate termination of the conference.

7 Unless there are extraordinary circumstances, persons required to  
 8 attend the conference pursuant to this Order shall not be excused from  
 9 personal attendance. **Requests for excuse from attendance for**  
**extraordinary circumstances shall be made in writing at least seventy-**  
**two (72) hours prior to the conference.** Failure to appear in person at  
 12 the Mandatory Settlement Conference will be grounds for sanctions.

13       b. **Full Settlement Authority Required:** In addition to  
 14 counsel who will try the case, a party or party representative with full  
 15 settlement authority<sup>1</sup> must be present for the conference. In the case  
 16 of a corporate entity, an authorized representative of the corporation  
 17 who is not retained outside counsel must be present and must have  
 18 discretionary authority to commit the company to pay an amount up to the  
 19 amount of the Plaintiff's prayer (excluding punitive damages prayers).  
 20 The purpose of this requirement is to have representatives present who  
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22       <sup>1</sup> "Full settlement authority" means that the individuals at the settlement  
 23 conference must be authorized to explore settlement options fully and to agree at that  
 24 time to any settlement terms acceptable to the parties. Heileman Brewing Co. v. Joseph  
Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have "unfettered  
 25 discretion and authority" to change the settlement position of a party. Pitman v.  
Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring  
 26 a person with unlimited settlement authority to attend the conference contemplates that  
 27 the person's view of the case may be altered during the face to face conference. Id.  
 28 at 486. A limited or a sum certain of authority is not adequate. See Nick v. Morgan's  
Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

1 can settle the case during the course of the conference without  
2 consulting a superior. Counsel for a government entity may be excused  
3 from this requirement so long as the government attorney who attends the  
4 Mandatory Settlement Conference (1) has primary responsibility for  
5 handling the case, and (2) may negotiate settlement offers which the  
6 attorney is willing to recommend to the government official having  
7 ultimate settlement authority.

8                   c. Confidential Settlement Statements Required: No later  
9 than February 22, 2008, the parties shall submit directly to Magistrate  
10 Judge Major's chambers confidential settlement statements no more than  
11 five (5) pages in length. These confidential statements shall not be  
12 filed or served on opposing counsel. Each party's confidential  
13 statement must include the following:

14                   (i) A brief description of the case, the claims and/or  
15 counterclaims asserted, and the applicable defenses or position  
16 regarding the asserted claims;

17                   (ii) A specific and current demand or offer for  
18 settlement addressing all relief or remedies sought. If a specific  
19 demand or offer for settlement cannot be made at the time the brief is  
20 submitted, then the reasons therefore must be stated along with a  
21 statement as to when the party will be in a position to state a demand  
22 or make an offer; and

23                   (iii) A brief description of any previous settlement  
24 negotiations, mediation sessions, or mediation efforts.

25 General statements that a party will "negotiate in good faith" is  
26 not a specific demand or offer contemplated by this Order. It is  
27 assumed that all parties will negotiate in good faith.

28                   d. Requests to Continue a Mandatory Settlement Conference:

1 Any request to continue the Mandatory Settlement Conference or request  
2 for relief from any of the provisions or requirements of this Order must  
3 be sought by a written ex parte application. The application must (1)  
4 be supported by a declaration of counsel setting forth the reasons and  
5 justifications for the relief requested, (2) confirm compliance with  
6 Civil Local Rule 26.1, and (3) report the position of opposing counsel  
7 or any unrepresented parties subject to the Order.

8 If the case is settled in its entirety before the scheduled date of  
9 the conference, counsel and any unrepresented parties must still appear  
10 in person, unless a written joint motion confirming the complete  
11 settlement of the case is submitted no less than twenty-four (24) hours  
12 before the scheduled conference.

13 All other dates remain as previously established.

14 **IT IS SO ORDERED.**

15 Dated: January 10, 2008



16 BARBARA L. MAJOR  
17 United States Magistrate Judge

18 COPY TO:

19 HONORABLE WILLIAM Q. HAYES  
20 U.S. DISTRICT JUDGE

21 ALL COUNSEL

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